HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1252 (S/S) year 2003

Kishan Pal Singh

Versus

Director Uttaranchal Krishi
Utpadan Mandi Parishad and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 20.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.
Writ Petition No. 1252(S/S) of 2003

Court No. 6
Date : 20th October, 2003

Kishan Pal Singh S/o Sri Phool Singh
Serving as Mandi Sahayak, Krishi Utpadan
Mandi Samiti Rishikesh,
District Dehradun --------- Petitioner

Vs.

1. Director Uttaranchal Krishi
Utpadan Mandi Parishad, Navin Mandi Sthal
Bareilly Road Haldwani
District Nainital
2. Joint Director Uttaranchal Krishi
Utpadan Mandi Parishad, Navin Mandi Sthal
Bareilly Road Haldwani
District Nainital ------- Respondents

Hon'ble Rajesh Tandon, J.

Heard learned counsel for the petitioner Sri Manoj Tiwari and standing counsel for the respondents. Both the parties have agreed that the writ petition may be decided finally.

By the present writ petition the petitioner has prayed for the following relief:-

A. To issue the writ, order or direction in the nature of mandamus directing the Respondents to consider the claim of the Petitioner for promotion to the post of Mandi Inspector in view of his position in the seniority list of Mandi Sahayak.

B. To issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 2 to promote the Petitioner with effect from the date when persons junior to him were promoted and also to grant him all consequential benefit including arrears of salary.

Brief facts giving rise to the present writ petition are that the petitioner has passed High School Examination from U.P. Board Allahabad in the year 1978 and thereafter he has appeared in the Madhyama Examination from Hindi Sahitya Sammelan Allahabad, which is equivalent to Intermediate Examination of U.P. Board.

According to the petitioner he was regularly appointed after due selection on the post of Mandi Sahayak in the pay scale of Rs. 315-440 vide order dated

07.04.1988 passed by the Secretary Krishi Utpadan Mandi Samiti Manglaur Saharanpur (now District Haridwar). Pursuant to he said order, he was transferred to Krishi Utpadan Mandi Samiti, Rishikesh in September 2000 and at present, he is serving at Rishikesh.

It has not been disputed that the U.P. Krishi Utpadan Mandi Parishad as well as Uttaranchal Krishi Utpadan Mandi Parishad are statutory authorities created under the provisions of U.P. Krishi Utpadan Mandi Adhiniyam 1964. Section 23 of the said Act deals with service conditions of officers and employees of Krishi Utpadan Mandi Samiti. Section 23-A provides for creation of centralized of services and transfer of employees from one Simiti to another.

Section 23 reads as under:-

23 समिति के अधिकारियों और सेवकों की नियुक्ति तथा उनकी सेवा की शर्ते –

1 इस अधिनियम के उपबन्धों के तथा तदर्थ बनाये गये नियमों के अधीन रहते हुये, समिति द्धारा पारित संकल्प द्वारा या उपविधियों द्वारा अधिकृत सीमा तक समिति उसको सभापति या सचिव ऐसे अधिकारियों और सेवकों को, जो इस अधिनियम के प्रयोजनों को कार्यान्वित करने के लिए आवष्यक हो, सेवा की ऐसी शर्तों पर, जिनकी व्यवस्था समिति की उपविधियों में की जाये, नियुक्त कर सकता है।

2 प्रत्येक समिति (के उतने सचिव) ऐसे अन्य अधिकारी होगें जिन्हें परिषद् समिति के कृत्यों का दक्षता से निर्वहन करने के लिये आवश्यक समझे जो परिषद् द्वारा ऐसी शर्तों तथा निर्बन्धनों पर जिनकी व्यवस्था परिषद् द्वारा गये विनियमों में की जाये नियुक्त किये जायेंगे।

23 (क) केन्द्रीय सेवा का संगठन तथा कर्मचारियों की स्थानान्तरण

1. इस अधिनियम के किसी अन्य उपबन्ध में अन्तर्विष्ट किसी बात के होते हुए भी, परिषद् सभी समितियों के लिये सचिवों और ऐसे अन्य अधिकारियों का एक सामान्य संगठित करेगी जिन्हें वह धारा 23 की उपधारा (2) के अधीन नियुक्त करना उचित समझें।

2. उपधारा (2 – ख) के उपबन्धों के अधीन रहते हुये,–

(क) किसी समीति में प्रतिनियुक्ति पर सेवारत सरकारी सेवक के भिन्न प्रत्येक व्यकितख जो उपधारा 1 में निर्दिष्ट संवर्ग में समाविष्ट कोई पद धारण करता हो, और

(ख) उक्त संवर्ग में किसी पद पर, प्रतिनियुक्त पर किसी समिति में सेवारत प्रत्येक सरकारी सेवक, जो अनुपयुक्त न पाया जाये, उसकी उपयुक्तता ऐसी रीति से अवधारित की जायेगी जैसी विनियमों मे निर्धारित की जाये।

उक्त संवर्ग के गठन के दिनांक को और उसी दिनांक से (जिसे आगे इस धरा में उक्त दिनांक कहा गया है) उपधारा (2 – क) में उल्लिखित निर्बन्धनों और शर्तों पर संवर्ग का सदस्य हो जायेगा।

The State Government in exercise of its rule making powers under the Act has framed statutory Rules known as U.P. Agricultural Produce Market Committees i.e. known as Centralized Service Regulation 1984, Regulation 13 provides direct recruitment has been provided to the extent of 75% and 25% by promotion of Kamdars having Intermediate or equivalent qualification with five years experience and this has been provided for the Amin/Auctioneers.

Both the parties have admitted that at present the post of Kamdar has been renamed as Mandi Sahayak and the post of Amin/Auctioneer is known as Mandi Inspector.

The petitioner has alleged that he is entitled to be considered for the promotion as Mandi Inspector by virtue of Regulation 17 of the Service Regulation, 1984. **Regulation 17 provides as under:-**

> *"Selection for promotion shall be made by Selection Committee constituted under regulation 12. The criteria for Selection shall be seniority subject to rejection of the unit.*
>
> *The appointing authority shall prepare an eligibility list of the candidates arranged in order to seniority and place it before the selection committee along with their character rolls and other necessary records pertaining to them.*
>
> *The Selection Committee shall consider the cases of the candidates on the basis of records to in-regulation (2) and if it consider necessary, it may interview the candidates also.*
>
> *The selection committee shall prepare list of selected candidates arranged in order of seniority and forward the same to the appointment authority."*

Regulations 18 further provides that if the appointment is to be made both by direct recruitment or by promotion, select list shall be prepared by staking the names of the candidates from the list prepared under the Regulations 16 and 17. The select list which is prepared in accordance with the Regulations 16 and 17 shall be prepared in order to show the eligibility of the candidate arranged in order of seniority. **Regulation 16, 17 and 18 are quoted below:-**

> *"16.* ***Procedure of selection by direct recruitment:***
>
> *1) When the applications of the candidates have been received in response to the advertisement made under regulation 14 or the*

names are received through the employment exchange the appointing authority shall fix a date for selection and forward the applications and names of the Selection Committee.

2) *The Selection Committee shall scrutinize the applications and prepare a list of eligible candidates. The Committee shall, having regard to the need for securing due representation of the candidates belonging to Scheduled Castes, Schedule Tribes and other categories in accordance with regulation II, call the eligible candidates for test and or interview as it may decide, In the case of selection for the posts of clerk-cum-typist, cashier-cum-clerk, amin / auctioneer the procedure laid down in the State Government Subordinate Officer Ministerial Staff (Direct Recruitment) Rules, 1975, as amended from time to time shall generally be adopted. The committee shall prepare list of candidates in order to merit as disclosed by the marks obtained in the test and or interview. If two or more candidates obtain equal marks, the committee shall arrange their names on the basis of their age, the order in age being placed higher.*

3) *The names of the candidates belonging to such categories for whom vacancies are required to be reserved under regulation 11 shall be arranged in the separate list according to their inter-se-merit disclosed by the marks obtained by him.*

4) *The number of candidates to be selected will be larger (but not larger by more than 25 per cent) than the number of vacancies for which the selection has been made.*

5) *The list appeared under sub-regulations (2) and (3) above shall be forwarded by the Selection Committee to the appointing authority mentioning the aggregate markes obtained at the selection by each candidate. The names of general and reserved candidates shall be arranged by the appointing authority in a common list according to the merit of the candidates having due regard to the posts reserved under regulation 11.*

17. Procedure of selection by promotion:-

1) *Selection for promotion shall be made by Selection Committee constitution under regulation 12. The criteria for Selection shall seniority subject to rejection of the unfit.*
2) *The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority and place it before the selection committee along with their character rolls and other necessary records pertaining to them.*
3) *The Selection committee shall consider the case of the candidate on the basis of records referred to in sub-regulation (2) and if it considers necessary, it may interview the candidates also.*
4) *The selection committee prepare list of selected candidates arranged in order of seniority and forward the same to the appointing authority.*

18. Combine List

If appointment is to be made both by direct recruitment and by promotion, a combined selet list shall be prepared by taking the names of the candidates from the lists prepared under regulations 16 and 17 in which manner that the prescribed percentage of dirct recruitment and promotion is mentioned the first name being from the list prepared under regulation 17."

According to the grievance of the petitioner two seniority lists have been prepared i.e. one in respect of Mandi Sahayak in which the list was in respect of Mandi Sahayak belonging to Scheduled Castes and the name of the petitioner has been mentioned at Sl. No.4. Second list relates to the General Category.

According to the submission of **the petitioner Regulation 17(1) (Sl. No. 6)** provides the criteria for promotion i.e. having passed equivalent to Intermediate and having five years experience. The same is quoted below:-

" That according to the aforesaid Regulations, the requisite academic qualification for appointment by direct recruitment to the post of Mandi Sahayak is High School. The post of Mandi Sahayak is classified as Group D post which constituted feeder post for promotion to the post of Mandi Inspector, which is a Gropup C post, Regulations 12 (2) lays down the procedure for promotion and provides that a Selection Committee shall be

constituted for considering the claim of Group D employees, for promotion to Group C. Regulations 13 provides that the post of Amin/Auctioneer (re-designated as Mandi Inspector) shall be filled 75% by direct recruitment and 25% by promotion of Kamdars having Intermediate or equivalent qualification with five years experience. It may be stated that the post of Kamdar has been re-designated as Mandi Sahayak and thus the Petitioner is eligible to be considered for promotion as Mandi Inspector. Regulations 17(1) ordains that criteria for promotion shall be seniority subject to rejection of unfit."

The petitioner therefore, has submitted that since he has passed High School Examination from U.P. Board Allahabad in the year 1978 and thereafter he has passed Madhyama Examination from Hindi Sahitya Sammelan Allahabad which is equivalent to Intermediate Examination of U.P. Board and therefore, the petitioner is entitled to be considered under the list prepared for the eligibility of the candidates for promotion.

The petitioner has also brought to the notice of the court regarding the malafides in **paragraphs 8 and 9 of the writ petition,** the same is mentioned as under:-

"That it may be stated that Prathma and Madhyama examinations conducted by Hindi Sahitya Sammelan Allahabad is recognized by the U.P. Krishi Utpadan Mandi Parishad and also by Uttaranchal Krishi Utpadan Mandi Parished. This is illustrated by the fact that Sri Natthi Prasad Kamgar (re-designated as Mandi Sahayak) was promoted as Mandi Inspector with effect from 07.07.1986. Sri Natthi Prasad possessed Prathma qualification in place on High School and thus it is apparent that Prathma qualification from Hindi Sahitya Sammelan is recognized by Mandi Parishad. Sri Natthi Prasad is presently serving on the post of Mandi Inspector in Mandi Samiti Kotdwar.

That it would not be out of context to mention here that one Sri Anand Bhallabh Tiwari serving for the post of Mandi Sahayak in Mandi Samiti Ramnagar (Nainital) has been promoted as Mandi Inspector with effect from 21.03.2002. Sri Anand

Bhallabh Tiwari possesses Madhyama qualification from Hindi Sahitya Sammelan Allahabad in place of Intermediate qualification from U.P. Board. One Sri Pan Singh who was serving on the post of Peon in Mandi Samiti Ramnagar was promoted as Clerk with effect from 01.05.1991 although he possessed only Madhyama qualification from Hindi Saqhitya Sammelan Allahabad and had not passes any examination from U.P. Board. Similarly Sri Keshal Datt Joshi, who possesses Sahitya Ratna qualification from Hindi Sahitya Sammelan which is equivalent to Bachelor's Degree of a University established by law was appointed by direct recruitment as Clerk in Mandi Samiti Sitarganj with effect from 07.01.2002."

The petitioner has submitted that his claim has not been considered while the claims of the 14 persons have already been considered and they were given promotion as well. The details of the names of the 14 persons are given below: -

क्रमांक	कर्मचारी का नाम	वर्तमान तैनाती मण्डी का नाम	पदोन्नति के फलस्वरूप तैनाती की मण्डी
1	2	3	4
1.	सर्वश्री कृपाल चन्द्र आर्या	थ्सतारगंज	रूद्रपुर
2.	" मोहम्मद हस्माईल	हरिद्वार यूनियन	मंगलौर
3.	" रमेश चन्द्र पाण्डेय	टनकपुर	थ्सतारगंज
4.	" विजेन्द्र कुमार तोमर	रूड़की	हरिद्वार यूनियन
5.	" तजप्रकाश गुरूरानी	काशीपुर	बजपुर
6.	" प्रेमराम	खटीमा	टनकपुर
7.	" कामता चौधरी	किच्छा	ग्दरपुर
8.	" राजवीर सिंह	विकास नगर	छेहरादून
9.	" प्रदीप कुमार	छेहरादून	ऋषिकेश
10.	" सुबोध कुमार	रूड़की	हरिद्वार यूनियन
11.	श्रीमती प्रेमा आर्या	हल्द्वानी	किच्छा
12.	सर्वश्री देवेन्द्र सिंह बिष्ट	हल्द्वानी	सितारगंज
13.	" कैलाश चन्द्र तिवारी	हल्द्वानी	रामनगर
14.	श्रीमती लता यादव	रूड़की	मंगलौर

As well appear from the aforesaid facts on record that the petitioner shall bring to the notice of the authority regarding the promotion of the aforesaid 14 persons. Apart from that petitioner shall also brought to the notice of the authorities regarding the Intermediate or the equivalent examination for the recruitment post in the cadre of services as mentioned in Regulation 13 for the purpose of direct recruitment. **Regulation 13 provides as under:-**

13 Quota:- *Subject to the provision of (2) recruitment to various categories of posts in the cadre of the service shall be made from the source and in the promotion indicated below:-*

Amit/Auctioneers	*Direct recruitment.* *By promotion from Kamdars having passed Intermediate or equivalent examination having five years experience.*

The counsel for the Uttaranchal Krishi Utpadan Mandi Parishad Sri J.C. Belwal has submitted that so far as the Prathma and Madhyama examination is concerned the same has not been treated to be equivalent to Intermediate examination as High School and Intermediate.

The counsel for the petitioner has raised his grievance that Article 14 of the Constitution of India applies amongst equals. The petitioner having a degree of Prathma and Madhyama which is equivalent to the High School and Intermediate and on the basis of those degrees promotion cannot be dnied. Therefore, the petitioner is entitled for the promotion under Regulation 13 of the Regulations.

He has also referred the judgment **Kumari Srilekha Vidyarthi & others Vs. State of U.P. and other AIR 1991 SCC P. 537** quoted below:-

"It is now too well settled that every State action, in order to service, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action in sine quo non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious

test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not be humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high the laws are above you'. This is what men in power must remember, always."

The petitioner has already made a representation on 25.07.2003.

In view of the submission made by both the parties, the respondent no. 1, Director of Uttaranchal Krishi Utpadan Mandi Parishad, Navin Mandi Sthal Bareilly Road Haldwani, District Nainital shall consider the claim of the petitioner in the light of the representation made by him after taking into considering Regulation 13 as well as averments made in the writ petition with regard to equal treatment.

Suffice it to state that if the petitioner is eligible for promotion, the same shall be considered according to the rules and eligibility criteria.

The respondent no. 1 shall consider the same in the light of the observations made above within two month from the date of filing of the certified copy of the order.

With the aforesaid observations the writ petition is disposed of. There will be no order as to cost.

(Rajesh Tandon, J.)

20.10.2003
ASWAL